

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

7/24/00

In the Matter of Clarence Spinazola,)	ADMINISTRATIVE
Solid Waste Landfill / 21E Site)	CONSENT ORDER
Wilmington, Massachusetts)	ACOP # NE-9009-4673

I. THE PARTIES

1. The Department of Environmental Protection (the "Department") maintains its principal offices at One Winter Street, Boston, Massachusetts 02108, and maintains a regional office at 205A Lowell Street, Wilmington, Massachusetts 01887.
2. Clarence Spinazola is an individual with a residential address at 5 Manning Street, Woburn, Massachusetts 01801.

II. STATEMENT OF FACTS

1. The Department is a duly constituted agency of the Commonwealth of Massachusetts, established pursuant to M.G.L. c. 21A, §7 and is responsible for the implementation and enforcement of M.G.L. c. 111, § 150A and § 150A1/2, and the regulations promulgated thereunder at 310 CMR 19.000. The Department also is responsible for the implementation and enforcement of M.G.L. ch. 131, § 40 and the regulations promulgated thereunder at 310 CMR 10.00; M.G.L. ch. 21H; M.G.L. ch. 111, §142A to §142M and the regulations promulgated thereunder at 310 CMR 7.00; and M.G.L. ch. 21E, and the regulations promulgated thereunder at 310 CMR 40.0000 (the "Massachusetts Contingency Plan" or "MCP"). The Department is authorized to assess civil administrative penalties pursuant to M.G.L. c. 21A, § 16, and the regulations promulgated thereunder at 310 CMR 5.00.
2. Mr. Spinazola is the owner in fee simple of approximately 62 acres of land located off of Old Main Street (Route 38) in Wilmington (the "Property"), including approximately 40 acres operated under agreement with the Town of Wilmington as a landfill for the disposal of solid waste from the mid-1950s until July 1, 1976 (the "Landfill").
3. On or about December 4, 1973, the Department of Public Health (predecessor to DEP) issued an Order to the Board of Selectmen of the Town of Wilmington (the

"Town") and Clarence Spinazola, directing them to perform certain actions relative to the proper operation of the Landfill (the "1973 Order").

4. On or about June 11, 1974, the Department of Public Health issued a Final Decision to the Town and Mr. Spinazola, after requests were made by the Town for review of the 1973 Order (the "1974 Decision"). The 1974 Decision required the Town and Mr. Spinazola to take certain actions relative to the proper operation of the Landfill, including the preparation of plans for closure of the Landfill.
5. On or about May 24, 1976, the Commonwealth of Massachusetts, on behalf of the Department of Environmental Quality Engineering (successor to the Department of Public Health and predecessor to DEP), the Town, and Mr. Spinazola entered into a *Consent Order* in Suffolk Superior Court Civil Action No. 12221, stating that the Town would cease the disposal of refuse at the Landfill after July 1, 1976, and that Mr. Spinazola would place final cover material over exposed refuse on or before July 15, 1976.
6. During the period from July 1, 1976, through the present, solid waste within the Landfill has remained below the water table within an area subsequently identified as the Zone II areas for the Town of Wilmington's public water supply wells identified as the Chestnut Street Pumping Station and Wells #1 and #1A/2 and the Butters Row Pumping Station and Wells #1 and #2, and wetlands vegetation has developed within areas of solid waste deposition. Also during this period, Mr. Spinazola has conducted various activities on top of the area of the Landfill.
7. In late 1996, Olin Corporation ("Olin") conducted a subsurface investigation on and near the Property, as part of Olin's efforts to evaluate migration of a release of hazardous materials that had occurred at Olin's property at 51 Eames Street in Wilmington. During Olin's 1996 investigation, volatile organic compounds ("VOCs") were detected at the Property above RCGW-1 concentrations established under the MCP.
8. On or about October 6, 1997, DEP issued a *Notice of Responsibility* ("NOR") to Mr. Spinazola under Chapter 21E and the MCP, with Release Tracking Number ("RTN") 3-15573, based upon the detection of VOCs at the Property during Olin's 1996 investigation. Subsequent investigations were conducted on behalf of Mr. Spinazola by Subsurface Remediation Technologies, Inc. ("SRT"), and on or about September 29, 1998, SRT filed a Release Notification Form and Downgradient Property Status report ("DPS") for the referenced RTN.
9. During March, April and May, 2000, DEP conducted inspections at the Property in order to evaluate compliance with various statutes and regulations implemented and enforced by DEP. In communications with representatives of Mr. Spinazola, the Department has identified regulatory issues of concern at the Property and has indicated that Mr. Spinazola may have outstanding compliance obligations under

various statutes and regulations arising from the condition of the Landfill as well as from activities conducted within existing wetland resource areas located on the Property, including M.G.L. c. 111, § 142A to § 142M and 310 CMR 7.00; M.G.L. c. 111, § 150A and 310 CMR 19.000; M.G.L. c. 131, § 40, and 310 CMR 10.00; and M.G.L. c. 21E, and the MCP.

10. Mr. Spinazola has cooperated with the Department's investigations, and on June 1, 2000, Mr. Spinazola initiated subsurface investigations to evaluate the Landfill and to identify the depth and lateral extent of waste on the Property.
11. Under 310 CMR 19.021(4), the owner of an inactive landfill that was in operation after April 21, 1971, but ceased operations prior to July 1, 1990, was required prior to January 1, 1992, to file proof of approved final closure or a final closure plan. To date, Mr. Spinazola has not made the required filing. Based upon the information provided by the referenced investigations, the Department has determined that landfill closure is necessary at the Property and that grading and shaping with appropriate materials may be necessary to stabilize the Landfill and to establish appropriate grades prior to capping.

III. DISPOSITION AND ORDER

1. As a result of the discussions between the Department and Mr. Spinazola, and without adjudication of any issue of fact or law set forth above, the parties have agreed to negotiate this Administrative Consent Order with Penalty ("ACOP") rather than expend the time and resources necessary to adjudicate any procedure and schedule that might be necessary to address compliance issues for the Property. This ACOP represents the full and final agreement between the parties concerning the necessary closure requirements for the Landfill, except as otherwise modified by any subsequent approvals issued pursuant to this ACOP. This ACOP shall not constitute, be construed as, or operate as an admission that any past, present, or future owner or operator of the Property has violated any law or regulation or has any specific obligations under any law or regulation, and neither shall this ACOP constitute any evidence or implication of any such violation or obligation. For purposes of M.G.L. c. 21A, § 16, and 310 CMR 5.00, this ACOP shall serve as a Notice of Noncompliance with respect to the requirements cited above.
2. Nothing in this ACOP shall be construed as, or operate as, barring, diminishing, adjudicating or in any way affecting any legal or equitable right of the Department to issue any future Order with respect to the subject matter covered by this ACOP, any other claim, action, suit, cause of action or demand that the Department may initiate, or any rights, defenses, claims, demands and causes of action that Mr. Spinazola may have against any person or entity other than the Department. This ACOP shall not be construed as, or operate as, relieving Mr. Spinazola or his

agents, employees, contractors and licensees, or any other person of the necessity of complying with all applicable federal, state and local, laws and regulations.

3. The Department hereby determines, and Mr. Spinazola agrees, that the deadlines set forth herein constitute reasonable times to perform the acts expressly agreed to in this ACOP and that the activities required pursuant to this ACOP otherwise satisfy applicable requirements, including 310 CMR 19.000, 310 CMR 10.00, 314 CMR 9.00, and 310 CMR 40.0000. This ACOP may be modified only by written agreement of the parties hereto or their successors or assigns.
4. The Department has determined that the requirements of this Section III are sufficient to authorize the reuse of certain materials from off-site to achieve final closure grades, and Mr. Spinazola agrees that the financial requirements associated with assessment and closure of the Landfill can and will be supported through reuse of grading and shaping materials authorized by DEP under Paragraph 8 below. Closure materials used for grading and shaping at the Landfill may include, subject to DEP-approval under Paragraph 8 below: (a) materials approved for reuse at unlined landfills in accordance with Policy No. COMM-97-001 (or any successor policy thereto); and (b) materials approved for grading and shaping by DEP in accordance with the "Guidelines for Determining Closure Activities at Inactive Unlined Landfill Sites," issued by DEP on July 17, 2000 (or any successor thereto), including without limitation, materials produced from the processing of construction and demolition ("C&D") waste, including C&D fines (three inches or less in size) and residual materials that remain after recyclable materials and C&D fines have been removed during C&D processing (collectively "C&D Residuals").
5. The activities conducted pursuant to this ACOP are subject to approval by the Department and shall be performed in accordance with M.G.L. c. 111, § 150A, 310 CMR 19.000, M.G.L. c. 21E, the MCP, M.G.L. c. 131, § 40, 310 CMR 10.00, and other applicable federal, state and local laws. Any noncompliance with applicable federal, state and local laws, regulations, and approvals that delays the achievement of any performance deadline set under this ACOP shall constitute a violation of this ACOP.
6. This ACOP shall apply to and be binding upon Mr. Spinazola and his heirs, successors, assigns, operators and licensees. Mr. Spinazola agrees to provide a copy of this ACOP to any successor, assign, contractor, or licensee and also to record the appropriate notification at the Registry of Deeds as set forth in 310 CMR 19.141.
7. Mr. Spinazola shall comply with this ACOP and Mr. Spinazola shall require his agents, employees, contractors and licensees to comply with this ACOP. Mr. Spinazola shall not accept any materials for reuse at the Property, except in accordance with DEP approval of the quantity and quality of such materials under Paragraph 8 below.

8. Mr. Spinazola shall comply with applicable landfill assessment and closure design procedures set forth at 310 CMR 19.140 through 19.151, and shall perform landfill closure design and landfill closure in accordance with the following schedule:
- A. Upon execution of this ACOP, and prior to receipt of approval under Paragraph 8.B. below, Mr. Spinazola shall have initiated further investigation of the Landfill under IDEP supervision, including a magnetic survey and/or electromagnetivity study (if either is feasible) in conjunction with test-pits to evaluate the Landfill for the presence of drums, and evaluation of groundwater by monitoring wells located in bedrock and overburden within the area north of the Landfill in the direction of the Town of Wilmington's public water supply wells described in Paragraph II.7. above. The locations of all investigations activities shall be determined in accordance with a work plan approved in advance by DEP as stated in the Department's letter to Mr. Spinazola dated June 7, 2000.
 - B. No later than forty-five (45) days after execution of this ACOP, Mr. Spinazola shall record the notice required under Paragraph 6 above, and shall submit to the Department for approval, pursuant to 310 CMR 19.037, a Scope of Work ("SOW") for an Initial Site Assessment ("ISA"), along with a Grading Plan for reuse of soils and residuals as grading and shaping material in advance of Landfill capping and closure. The Grading Plan shall include: a current topographic map of the site; a wetlands resource area delineation; a preliminary delineation of waste; an estimated interim volume of grading and shaping materials, not to exceed 500,000 cubic yards, to achieve minimum grades ("Phase I"), and an estimated total volume of grading and shaping materials to achieve maximum anticipated post-closure grades ("Phase II"); a materials management plan (including a Bill of Lading ("BOL") procedure and material tracking and reporting procedure); haul routes; on-site material unloading and inspection procedures; quality assurance/quality control procedures; a health and safety plan; noise, dust and erosion control plans; and details of nighttime operations (8:00 p.m. to 6:00 a.m.) which shall require written approval by local authorities.
 - C. Prior to receiving DEP approval of Phase I of the Grading Plan, Mr. Spinazola shall provide an opportunity for public review and 21-day written comment by: (a) sending public notice through local newspapers, a posted meeting notice, and notice by certified mail to abutters of the Property and to owners of property abutting such properties; (b) affording participants, including local boards and agencies, an opportunity to provide written comments; and (c)

furnishing the Department with copies of minutes and any written comments received by Mr. Spinazola concerning the public meeting and this ACOP. After the Department reviews and approves Phase I of the Grading Plan, grading and shaping may proceed in accordance with conditions and limitations set forth by the Department, provided that Department approval of Phase II of the Grading Plan shall not occur until information has been submitted regarding the investigation initiated at the Property and the public meeting process under Section E below has been completed. Stormwater/erosion controls must be fully in place prior to placement of any material on the Landfill as authorized by this ACOP.

- D. No later than sixty (60) days after DEP's written approval of Phase I of the Grading Plan and the SOW for the ISA, Mr. Spinazola shall submit to the Department: a final report on delineation of the limits of waste; an update (if any) to the materials management plan; a final ISA report; a Comprehensive Site Assessment ("CSA") SOW for DEP approval; and a conceptual Landfill Closure Plan, including details of any proposal for phased capping of the Landfill. At the same time, Mr. Spinazola also shall submit to DEP an evaluation of the impact of recent unpermitted activities on wetland resource areas outside of the limits of solid waste, including a proposal for restoration or replication of such affected areas.
- E. No later than thirty (30) days after DEP's written approval of the CSA scope of work, Mr. Spinazola shall initiate the CSA. Not later than nine (9) months thereafter Mr. Spinazola shall submit to the Department a draft CSA Report along with a preliminary Corrective Action Alternatives Analysis ("CAAA") prepared in accordance with Section B.3.b. of the "Guidelines for Determining Closure Activities at Inactive Unlined Landfill Sites," issued by DEP on July 17, 2000, and an update to Phase II of the Grading Plan. Prior to receiving DEP approval of Phase II of the Grading Plan, Mr. Spinazola shall provide an opportunity for public review and 21-day written comment by: (a) sending public notice through local newspapers, a posted meeting notice, and notice by registered mail to abutters of the Property and to owners of property abutting such properties; (b) affording participants, including local boards and agencies, an opportunity to provide written comments; and (c) furnishing the Department with copies of minutes and any written comments received by Mr. Spinazola concerning the public meeting. Within fifteen (15) months after DEP's approval of the CSA scope of work, Mr. Spinazola shall submit a CSA Report to the Department for approval along with an updated CAAA.

- F. No later than forty-five (45) days after DEP's written approval of the CSA Report, Mr. Spinazola shall submit a final CAAA Report to the Department for approval.
 - G. No later than ninety (90) days after DEP's written approval of the CAAA report, Mr. Spinazola shall submit for DEP approval Final Closure Plans and Post-Closure Maintenance and Monitoring Plans.
 - H. Mr. Spinazola shall complete closure and capping of the area included with Phase I of the Grading Plan I no later than November 1, 2002, provided that this area shall be completed with intermediate cover and stable vegetation if Phase II of the Grading Plan has been approved by DEP as set forth herein. Final grading, shaping, capping and closure of the Landfill shall be completed by November 1, 2004, or within twelve (12) months after the approved closure grades shown on an approved Final Closure Plan has been reached, whichever is sooner, provided that the Department will consider an extension of not more than one year if Mr. Spinazola has made significant progress towards final closure and can demonstrate a reasonable need for such extension.
 - I. Within ninety (90) days after closure is completed, but no later than January 31, 2006, a landfill closure certification report shall be submitted to the Department.
9. Prior to issuance by DEP of approval for Phase I of the Grading Plan under Paragraph 8 above, Mr. Spinazola shall have furnished to the Department a financial assurance mechanism ("FAM") in the amount of Two Million Dollars (\$2,000,000), provided that Phase I grading and shaping activities approved by DEP shall be restricted to an active area of not more than ten (10) acres beyond areas of Phase I grading that have been completed with final capping or intermediate cover and stable vegetation. In addition, prior to issuance by DEP of approval for Phase II of the Grading Plan under Paragraph 8 above, Mr. Spinazola shall have furnished to the Department a revised FAM in accordance with 310 CMR 19.051.
10. The Department also has determined that response actions undertaken to address the NOR issued for RTN 3-15573 shall be deemed adequately regulated for purposes of M.G.L. c. 21E and the MCP if Upper Concentration Limits ("UCLs") set in the MCP are not exceeded and if such actions are performed in accordance with landfill closure plans and the CSA work reviewed and approved by the Department as set forth herein. Any release of oil and/or hazardous material associated with RTN 3-15573 occurring off of the Landfill, or new or newly discovered release of oil and/or hazardous material, is not subject to this paragraph or to the adequately regulated provision of the MCP, unless the Department issues an independent determination that such release is adequately regulated.

11. If at any time there exists a condition at the Property that results in a threat to public health, safety, or the environment, or that is creating a nuisance, the Department may seek any appropriate relief to address such condition.
12. The Department and its agents shall have the right to enter upon the Property at reasonable times to monitor compliance with the ACOP and all applicable environmental laws and regulations, provided that Department personnel and its agents shall identify themselves to on-site personnel prior to entering the site.
13. All engineering work pursuant to this ACOP shall be performed under the general direction and supervision of a qualified registered professional engineer. Any contract between such engineer or his employer and Mr. Spinazola (or his operator or licensee) shall require the engineer and his employer to implement work consistent with the provisions of this ACOP. Within thirty (30) days of written request by the Department, Mr. Spinazola shall provide the Department with evidence of the required contract provision. The Department shall not be deemed a party to any such contract and does not assume any liability thereunder.

IV. FORCE MAJEURE

1. If any event occurs which delays or will delay a performance date established by this ACOP, which event was beyond the control and without the fault of Mr. Spinazola, including his contractors and consultants, and which event could not have been prevented or avoided by the exercise of due care, foresight, or due diligence on the part of Mr. Spinazola, including his contractors and consultants, Mr. Spinazola shall immediately, and in any event within fifteen (15) days of such occurrence, notify the Department in writing of the anticipated length of the delay, the cause of the delay and the steps or measures to be taken to prevent or minimize the delay, including a timetable by which Mr. Spinazola intends to implement such steps or measures. Upon receiving the approval of the Department, Mr. Spinazola shall implement such steps or measures as are approved by the Department to avoid or minimize any delay. Nothing in this paragraph shall excuse any noncompliance by Mr. Spinazola with the provisions of this ACOP.
2. If Mr. Spinazola notifies the Department of the occurrence of an event which delays or will delay a performance date established by this ACOP, and if Mr. Spinazola otherwise complies with the requirements of Paragraph 1 of this Section, and if the Department determines that the delay has been or will be caused by circumstances beyond the control and without the fault of Mr. Spinazola, including his contractors and consultants, and can not or could not have been overcome by the exercise of due diligence, due care or foresight, the Department shall extend the time for performance hereunder for a period of time equal to the length of the delay.

3. If Mr. Spinazola disagrees with the Department's determination pursuant to Paragraph 2 of this Section, and if the parties are unable to reach an agreement that the delay has been or will be caused by circumstances beyond the control and without the fault of Mr. Spinazola, including his contractors and consultants, and can not or could not have been overcome by the exercise of due diligence, due care or foresight by Mr. Spinazola, including its contractors and consultants, then the matter may be submitted by any party to the Massachusetts Superior Court for resolution.
4. In any proceeding pursuant to Paragraph 3 of this Section, Mr. Spinazola shall bear the burden of proving: (1) that the delay has been or will be caused by circumstances beyond the control and without the fault of Mr. Spinazola, including his consultants and contractors; (2) and that neither Mr. Spinazola nor any contractors and consultants could have prevented or avoided such delay by the exercise of due care, foresight, or due diligence on the part of Mr. Spinazola, including his contractors and consultants; and (3) the number of days of the delay caused by such circumstances.
5. Unanticipated or increased costs or expenses associated with the implementation of the actions required under this ACOP or changed financial circumstances shall not, for the performance of the actions required by this ACOP, be considered beyond the control and without the fault of Mr. Spinazola.

V. STIPULATED PENALTIES

1. In the event Mr. Spinazola or his employees, agents, or contractors, violate this ACOP, Mr. Spinazola or his employee, agent, or contractor (depending upon the identity of the violator) agrees to pay stipulated penalties in accordance with the following schedule:

For each day of each violation of schedules set forth above in Section III, Paragraph 7., Paragraph 8B. and Paragraphs 8D. through 8I. inclusive, the violator(s) shall pay stipulated penalties as follows:

<u>Violation</u>	<u>Penalty per day</u>
For Paragraphs 8B., 8D., 8E., 8F., 8G., or 8I.	\$ 500 per day
For Paragraphs 7. or 8H.	\$ 1,000 per day

For continuing violation, the penalty shall be increased as follows:

1st through 30th day	base penalty above, per day
31st through 90th day	two (2) times base penalty, per day
91st day and thereafter	three (3) times base penalty, per day

2. Stipulated penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day the violation is corrected or performance is complete, whichever is applicable. For multiple, simultaneous violations, separate penalties shall accrue for each such violation. Stipulated penalties shall accrue regardless of whether the Department has provided notice of a violation or act of noncompliance. The payment of stipulated penalties shall not alter in any way the obligations to complete performance as required by this ACOP.
3. All stipulated penalties accruing under this ACOP shall be paid within twenty-one (21) days of the date the Department sends a written claim therefor. The stipulated penalties set forth herein shall not preclude the Department from electing to pursue alternative remedies or alternative civil or criminal penalties which may be available by reason of a failure to comply with the requirements of this ACOP. In the event the Department collects alternative penalties, Mr. Spinazola (or other party) shall not be required to pay any duplicative stipulated penalties.
4. All penalties due under this ACOP shall be paid by certified check, cashier's check or money order payable to the Commonwealth of Massachusetts. The party paying the penalty shall print their name, the pertinent file number, and their Federal Employer Identification Number on the face of their payment, and shall mail it to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3584
Boston, Massachusetts 02241-3584

A copy of the payment shall be sent to:

David Murphy, P.E.
Special Projects Manager
Office of the Commissioner
Department of Environmental Protection
One Winter Street
Boston, MA 02108

VI. ADMINISTRATIVE PENALTIES AND PERMIT APPLICATION FEES

1. For the regulatory issues of concern and outstanding compliance obligations identified by DEP at the Property as described in Paragraph II.10. above, Mr. Spinazola shall pay to the Commonwealth of Massachusetts a civil administrative penalty in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00), of which One Hundred Thousand Dollars (\$100,000) shall be paid within sixty (60) days of the effective date of this ACOP. The Department hereby determines, and

Mr. Spinazola agrees, that an additional amount of Fifty Thousand Dollars (\$50,000.00) of civil administrative penalties will be held in suspension pending the completion of one or more Supplemental Environmental Projects ("SEPs") which Mr. Spinazola agrees to fund in the total amount of \$50,000 as set forth below. If the Department determines that Mr. Spinazola has failed to complete the SEPs as set forth below, then no later than thirty (30) days after such determination, Mr. Spinazola shall pay to the Commonwealth the suspended civil administrative penalty of \$50,000, in the same manner described herein.

2. On or before October 1, 2000, Mr. Spinazola shall submit to the Department a written scope of work and schedule for implementing one or more SEPs, in the total amount of \$50,000, in accordance with DEP Policy ENF-97.005. Mr. Spinazola must obtain the Department's assent to the SEP(s) before implementing each SEP. Mr. Spinazola shall furnish the Department with documentation evidencing completion of each SEP on or before March 1, 2001.
3. Mr. Spinazola shall pay all penalties due under this ACOP by certified check, cashier's check or money order payable to the Commonwealth of Massachusetts. Mr. Spinazola shall clearly print the name "Spinazola," and File No. ACOP-NE-9009-4673 and Mr. Spinazola's Federal Taxpayer Identification Number on the face of the payment and shall mail it to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3584
Boston, Massachusetts 02241-3584

Mr. Spinazola shall deliver a copy of the payment to David A. Murphy P.E., Department of Environmental Protection, One Winter Street, Boston, 02108.

4. Failure to comply with any Department rule or regulation or this ACOP may result in the assessment of administrative penalties by the Department in the amount up to twenty-five thousand dollars (\$25,000) per day, per violation, in accordance with M.G.L. c. 21A, §16, provided that rights for review or appeal of any such penalty assessment may be exercised.
5. The parties agree that the filing and review of submittals required under this ACOP shall be conducted in accordance with DEP regulations for Timely Action, 310 CMR 5.00, and policies adopted by DEP for expedited review, if applicable.

VII. DISPUTE RESOLUTION

1. The Department and Mr. Spinazola shall attempt to resolve informally any disagreements concerning implementation of this ACOP or any work required hereunder.
2. If Mr. Spinazola objects to any written approval, disapproval, claim, demand, or determination of the Department (including a determination pursuant to the force majeure section of this ACOP) made in accordance with this ACOP, Mr. Spinazola shall notify the Department in writing of its specific objections within seven (7) days of receipt of the Department's writing. In response, the Department shall set a date for the completion of dispute resolution and notify Mr. Spinazola of such date either by writing, facsimile, or oral communication followed by a writing; such date shall be no sooner than seven (7) days after the Department receives the written notice of objections.
3. Mr. Spinazola and the Department then shall attempt to resolve the objections and may engage in discussions, meetings, fact-finding, and any other activities which facilitate resolution of the objections. At any time, the Department may require Mr. Spinazola to submit to the Department a more complete written statement of his objections and the factual and legal basis for such objections.
4. After the dispute has been resolved or the date for completion of dispute resolution has passed, the Regional Director, or his/her designee, shall issue a written statement setting forth the agreement or his or her findings and the final determination in the matter. Such agreement or determination will be effective upon the receipt of such written statement by Mr. Spinazola.
5. Mr. Spinazola shall undertake all the work required by the agreement or the Department's final determination. Failure of Mr. Spinazola to undertake such work shall be a violation of this ACOP.
6. Entering objections pursuant to this section shall not be cause for delay of the implementation of any work not specifically the subject of the written notice of objections. Deadlines for other work which is specifically the subject of the written notice of objections shall be extended an amount of days equal to the number of days from the date of the Department's initial writing to the date of the agreement or the Department's final determination.
7. Determinations involving permits, approvals, orders, agreements and other actions by the Department under authority other than M.G.L. c. 111, § 150A and the regulations promulgated thereunder at 310 CMR 19.000 shall not be subject to dispute resolution pursuant to this Section.

VIII. NON-WAIVER

Notices, submittals or filings required under this ACO shall be made in writing to:

For the Department:

David Murphy, Special Projects Manager
Office of the Commissioner
Department of Environmental Protection
One Winter Street
Boston, MA 02108

For Mr. Spinazola:

Barry P. Fogel
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, MA 02110

XI. EFFECTIVE DATE

This ACO shall be effective upon the date signed by the Department.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Elizabeth A. Nardone
By: *Associate Commissioner of
Operations & Programs*

7/24/00
Date

CLARENCE SPINAZOLA

Clarence Spinazola

July 5 2000
Date